
Appeal Decision

Site visit made on 29 August 2023

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 12 September 2023

Appeal Ref: APP/K5600/X/22/3293978

46 Lansdowne Road, London W11 2LR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by CO AGENT on behalf of Ms Pappudu Sriram against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref CL/21/07066, dated 1 November 2021, was refused by a notice dated 21 December 2021.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought an external fireplace.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have dealt with another appeal on this site: APP/K5600/W/22/3293983. That appeal is the subject of a separate decision.
3. The application was made under section 192 of the Town and Country Planning Act, 1990 (the Act) for a Lawful Development Certificate in respect of the proposed construction of an external fireplace. However, at the time of my site visit the fireplace had been constructed, albeit the final paint finish had not been applied. The appellant has subsequently confirmed that this was also the condition of the fireplace at the time when the application was made, i.e. 1 November 2021. The proposal would be to finish the fireplace in paint to match the colour of the surrounding stucco.
4. Section 192(2) of the Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or began at the time of the application, they shall issue a certificate to that effect. In this case at the time the application was made the proposed operations had begun. There is no provision under s192 to issue a certificate for works that have already begun. I shall therefore determine the appeal under s191 of the Act and determine the lawfulness of the fireplace as constructed at the time of the application.

Main Issue

5. Section 191(4) of the Act indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matters described in the application they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded.

Reasons

6. Section 55(1) of the Act states that development "*means the carrying out of building, engineering, mining or other alterations in, on, over or under land, or the making of any material change in the use of any building or other land*". Section 55(1A) states that: "*For the purposes of the Act "building operations" include (a) demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder.*"
7. Section 55(2) of the Act provides that amongst other things the carrying out of maintenance, improvement or other alterations of any building or works which do not materially affect the external appearance of the building shall not be taken to involve development of the land for the purposes of the Act.
8. In this case the works undertaken are the construction of an external fireplace. I recognise that the construction of the brick fireplace surround may not have required the skills of a builder. However, the opening up of the chimney breast and creation of the fireplace itself would have involved structural alterations and in my view would be operations normally undertaken by a person carrying out business as a builder, and therefore constitute "*building operations*" for the purposes of the Act.
9. It has been held in the courts that a judgement on whether alterations to the exterior of the building, which materially affect the external appearance of the building, will involve consideration of: the change to the external appearance of the building as a whole and not a part in isolation; the degree of visibility by an observer outside the building; the nature of the building; and the nature of the alterations/works.
10. The appeal property is a detached three-storey painted stucco townhouse with a basement (lower ground floor). Its high-quality design, including its fine architectural detailing and joinery make a positive contribution to the character and appearance of Ladbroke Conservation Area (CA), where it is situated. Although the fireplace has been constructed on the rear elevation of the building and is thus not readily visible to public views, it is clearly visible to any person observing the building from the rear roof terrace and from the upper floor windows of neighbouring properties to the rear. Whilst it is a relatively small alteration to a property of this scale, the nature of the works undertaken, by reason of their form and materials appear incongruous on the exterior façade of this period building of some architectural and historic merit and within a conservation area. In my judgement the fireplace has materially affected the external appearance of the building as a whole.

11. For the reasons given above, I conclude that the construction of the external fireplace is "*development*" for the purposes of the Act. It is therefore necessary to consider whether the development would be permitted by any general development order or express planning permission.
12. The enlargement, improvement or other alteration of a dwellinghouse is permitted by Class A, Part 1, Schedule 2, Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order, 2015, as amended (GPDO) subject to limitations set out in A.1 and A.2 and conditions at A.3 and A.4.
13. The Council Officer's report confirms that the external fireplace would meet the limitations set out in Class A (a), (b), (c), (d), (e), (f), (g), (h), (i) and (k) of the GPDO, and from the evidence provided with the application and in support of it, I see no reason to take a different view. However, taking into consideration the location of the site within the CA, the Council consider that the development would not be permitted by Class A.2 as the development involves the cladding of part of the exterior of the dwellinghouse with a render finish.
14. The external fireplace is constructed in brickwork with a timber mantel beam. The use of render, nor any form of cladding, forms part of its construction. Consequently, the development complies with the limitation set out in A.2 of this Class of the GPDO. However, it is a condition of development permitted by Class A that: "*(a) the material used on any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.*"
15. The exterior of the existing dwellinghouse is painted stucco. The narrow and distinct courses of rustic bricks and the timber mantel that have been used to construct the fireplace and surround are very different in appearance to the smooth stucco which has the appearance of fine ashlar. The materials used in the construction of the external fireplace, even if a painted finish was applied, are not therefore of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse and the development is not therefore permitted by Class A, Part 1, Schedule 2, Article 3(1) of the GPDO.
16. I have had regard to the appellant's view that the development would be permitted under Class G, Part 1, Schedule 2, Article 3(1) of the GPDO. Class G permits the installation, alteration or replacement of a chimney, flue or soil and vent pipe of a dwellinghouse subject to conditions and limitations. I do not share that view. The works that have been undertaken are not an alteration to a chimney, the ordinary meaning of which is the vertical channel or pipe which conducts smoke and fumes from a fire/furnace. The works that have been undertaken are the construction of a new fireplace and surround. Those works go well beyond the alteration of the chimney.
17. Consequently, development has occurred under s55(1) of the Act. By s57 of the Act planning permission is required for the carrying out of development on any land. The development is not permitted by any general development order or express planning permission.

Conclusion

18. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of an external fireplace was well-founded, and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act, as amended.

Elizabeth Pleasant

INSPECTOR